

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

PAUL KERRY POWELL,	:	
	:	NO. 1:11-CV-00162
Petitioner,	:	
	:	
	:	
v.	:	OPINION AND ORDER
	:	
	:	
WARDEN, MADISON CORRECTIONAL	:	
INSTITUTION,	:	
	:	
Respondent.	:	

This matter is before the Court on the Magistrate Judge's Report and Recommendation, (doc. 12), to which no objections were filed.

Petitioner filed a petition for habeas corpus with respect to his 2004 conviction and sentencing for felonious sexual penetration and rape in the Clermont County Court of Common Plea, for which he was sentenced to a prison term of 15-50 years (doc. 12). He presents two grounds for relief in his petition: first, he was denied due process because his plea was "unknowing, unintelligent and involuntary"; and second, he would not have pleaded but for the ineffective assistance of counsel he received (doc. 1).

The Magistrate Judge noted that Petitioner's counsel had previously filed a habeas petition on Petitioner's behalf, challenging the same conviction and sentence based on the same

claims for relief (doc. 12). That case is currently pending before a different judge of this district. Because this case is the later-filed of the two, the Magistrate Judge recommends (1) that Petitioner's petition here be dismissed as duplicative of the earlier-filed petition, without prejudice to Petitioner's prosecution of that duplicative, earlier-filed petition, entitled Paul Kerry Powell v. Warden, Lebanon Corr. Inst., Case No. 1:11cv122 (Beckwith, J.; Litkovitz, M.J.); (2) that a certificate of appealability not issue; and (3) that the Court certify that any appeal would not be taken in good faith.

Having reviewed this matter pursuant to 28 U.S.C. §636(b), the Court finds no clear error on the face of the record and, indeed, finds the Report and Recommendation to be thorough, well-reasoned and correct. See Advisory Committee Notes to Fed. R. Civ. P. 72; Thomas v. Arn, 474 U.S. 140, 150(1985)("It does not appear that Congress intended to require district court review of a magistrate judge's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings"). Accordingly, the Court ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation in its entirety (doc. 12).

Therefore, Petitioner's habeas corpus petition is DENIED WITHOUT PREJUDICE to the currently-pending duplicative case before Judge Beckwith. Further, the Court FINDS that a certificate of

appealability should not issue with respect to the claims alleged in the petition because "jurists of reason" would not find it debatable whether this Court is correct in its procedural ruling. Slack v. Daniel, 529 U.S. 473 (2000).

Finally, the Court CERTIFIES pursuant to 28 U.S.C. § 1915(a)(3) that with respect to any application by Petitioner to proceed on appeal in forma pauperis, an appeal of this Order would not be taken in good faith and therefore the Court DENIES Petitioner leave to appeal in forma pauperis. Fed. R. App. P. 24(a); Kincade v. Sparkman, 117 F.3d 949, 952 (6th Cir. 1997).

SO ORDERED.

Dated: July 19, 2011

/s/ S. Arthur Spiegel

S. Arthur Spiegel

United States Senior District Judge